



Rule(s) Review Checklist Addendum
(This form must be filled out electronically.)

This form is to be used only if the rule(s) was/were previously reviewed, and has/have not been amended/repealed subsequent to that review.

All responses should be in **bold** format.

Document(s) Reviewed (include title): **WAC 458-20-185 Tax on Tobacco Products**

Date last reviewed: **April 14, 1999**

Reviewer: **Anne Solwick**

Date current review completed: **June 4, 2002**

Briefly explain the subject matter of the document(s): **WAC 458-20-185 provides information to distributors and subjobbers of tobacco products. The rule explains the record keeping and filing requirements. It also provides a sample certificate for purpose of claiming a credit to tax paid on products destroyed or returned to the manufacturer.**

Type an "X" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Public requests for review:

YES	NO	
	X	Is this document being reviewed at this time because of a public (e.g., taxpayer or business association) request?

If "yes," provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request.

2. Related statutes, interpretive and/or policy statements, court decisions, BTA decisions, and WTDs: (Excise Tax Advisories (ETAs), Property Tax Advisories and Bulletins (PTAs/PTBs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.)

YES	NO	
X		Are there any statutory changes subsequent to the previous review of this rule that should be incorporated?
	X	Are there any interpretive or policy statements not identified in the previous review of this rule that should be incorporated? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any interpretive or policy statements that should be repealed because the information is currently included in this or another rule, or the



		information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) subsequent to the previous review of this rule that provide information that should be incorporated into this rule?
	X	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) subsequent to the previous review of this rule that provide information that should be incorporated into the rule?
	X	Are there any changes to the recommendations in the previous review of this rule with respect to any of the types of documents noted above? (An Ancillary Document Review Supplement should be completed if any changes are recommended with respect to an interpretive or policy statement.)

If the answer is “yes” to any of the questions above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

Chapter 325, Laws of 2002 effective July 1, 2002 created a new class of taxpayer. An emergency rule to be adopted July 1, 2002 incorporates the provisions of this legislation. These provisions should be incorporated into a revised permanent rule.

3. Additional information: Identify any additional issues (other than those noted above or in the previous review) that should be addressed or incorporated into the rule. Note here if you believe the rule can be rewritten and reorganized in a more clear and concise manner.

Decisions have been issued in two pending court cases noted in the Rule Review dated April 14, 1999.

McLane Inc., et al v. Department of Revenue, 105 WnApp 409, 19 P3d 1119 (2001), affirms the finding in Det. 98-006E, 17 WTD 1 (1998) regarding who must pay the tax when a manufacturer sells tobacco product to an in-state affiliate.

United States Tobacco Sales and Marketing Co. Inc. v Department of Revenue, 96 WnApp 932, 982 P2d 652 (1999), addresses the proper measure of tax when a manufacturer sells tobacco product to an in-state affiliate. This case was remanded to Superior Court on a question of fact not law. The law stated in the case should be incorporated into the rule.

The rule can be reorganized in a clearer manner.



4. Listing of documents reviewed: The reviewer need identify only those documents that were not listed in the previous review of the rule(s). Use “bullets” with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorney General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).

Statute(s) Implemented:

- **Chapter 82.26 RCW (Initiative of the People # 773)**
- **Chapter 325, Laws of 2002 effective July 1, 2002 (Emergency rule adopted effective 7/1/02)**

Interpretive and/or policy statements (e.g., ETAs, PTAs, and IAGs):

Court Decisions:

- **McLane Inc., et al v. Department of Revenue, 105 WnApp 409, 19 P3d 1119 (2001).**
- **United States Tobacco Sales and Marketing Co. Inc. v Department of Revenue, 96 WnApp 932, 982 P2d 652 (1999).**

Board of Tax Appeals Decisions (BTAs):

Appeals Division Decisions (WTDs):

Attorney General Opinions (AGOs):

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

5. Review Recommendation:

- | | |
|---------------|---|
| <u> X </u> | Amend |
| <u> </u> | Repeal/Cancel (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.) |
| <u> </u> | Leave as is (Appropriate even if the recommendation is to incorporate the current information into another rule.) |
| <u> </u> | Begin the rule-making process for possible revision. (Applies only when the Department has received a petition to revise a rule.) |



Explanation of recommendation: Provide a brief summary of your recommendation, whether the same as or different from the original review of the document(s). If this recommendation differs from that of the previous review, explain the basis for this difference.

At the time of the previous rule review the two court cases referenced above were pending. The court now has rendered decisions in those cases which should be incorporated into the rule.

Legislation passed since this previous rule review creates a new class of taxpayer. This information will be adopted into an emergency rule; a permanent rule incorporating this information needs to be adopted.

If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, court decisions).

6. Manager action: Date: _____

_____ Reviewed and accepted recommendation

Amendment priority:

- _____ 1
- _____ 2
- _____ 3
- _____ 4